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FILED
DISTRICT COURT OF GUAM
APR 30 2007 mba
MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

MARESA L. ANDERSON,
Plaintiff,
vs.
UNITED STATES OF AMERICA,
Defendant.

CIVIL CASE NO. 07-00003

MOTION TO STRIKE REQUEST
FOR A JURY TRIAL

The United States hereby moves to strike Plaintiff's request for a jury trial. The request for a jury trial is included in Plaintiff's Complaint against the United States. The Complaint is based on the Federal Tort Claims Act (FTCA).

In actions against the United States, there is no right to a trial by jury unless the statute so provides. United States v. Nuestadt, 18 S.Ct. 1294, 1297, 366 U.S. 696, 701, n.10(1961). Since the sovereign need not allow suit against it, it is free to allow suit on whatever terms it chooses, and may deny a jury trial. McElrath v. United States, 12 Otto (102 U.S.C.A. Sect. 2402 and Sect 1346, et.seq. Suits against the United States are not suits at common law within the meaning of the Seventh Amendment, since they exist only because of the legislative waiver of sovereign immunity. There is no constitutional right to a jury trial under the FTCA. Glidden Co. v. Zdanok, 370 U.S. 530, 82 S.Ct. 1459 (1962).

The Plaintiff's request for a trial jury should be struck from the Complaint and any trial must be by the Court.

So moved, this 27th day of April 2007.

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

BY:

~~MIKEL W. SCHWAB~~
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, FRANCES B. LEON GUERRERO, working in the U.S. Attorney's Office, in the District of Guam, hereby certify that on April 30, 2007, I caused to be served by personal service, a copy of the foregoing document, "Motion to Strike Request for a Jury Trial", Maresa L. Anderson v. United States, Civil Case No. 07-00003, the following attorney of record:

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Frances B Leon Guerrero
FRANCES B. LEON GUERRERO
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